

R156. Commerce, Occupational and Professional Licensing.

R156-44a. Nurse Midwife Practice Act Rules.

R156-44a-101. Title.

These rules are known as the "Nurse Midwife Practice Act Rules."

R156-44a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 44a, as used in Title 58, Chapters 1 and 44a or these rules:

(1) "Approved certified nurse midwifery education program" means an educational program which is accredited by the American College of Nurse Midwives.

(2) "CNM" means a certified nurse midwife.

(3) "Delegation" means transferring to an individual the authority to perform a selected nursing task in a selected situation. The nurse retains accountability for the delegation.

(4) "Direct supervision" as used in Section 58-44a-305 means that the person providing supervision shall be available on the premises at which the supervisee or consultee is engaged in practice.

(5) "Generally recognized scope and standards of nurse midwifery" means the scope and standards of practice set forth in the "Core Competencies for Basic Midwifery Practice", May 1997, and the "Standards for the Practice of Nurse-Midwifery", August 1993, published by the American College of Nurse Midwives which are hereby adopted and incorporated by reference, or as established by the professional community.

(6) "Supervision" in Section R156-44a-601 means the provision of guidance or direction, evaluation and follow up by the certified nurse midwife for accomplishment of tasks delegated to unlicensed assistive personnel or other licensed individuals.

(7) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 44a, is further defined in Section R156-44a-502.

R156-44a-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 44a.

R156-44a-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

Part 3 - Licensing

R156-44a-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-44a-302(5), the examination required for licensure is the national certifying examination administered by the American College of Nurse Midwives Certification Council, Inc.

R156-44a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 44a is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

(3) Each applicant for licensure renewal shall comply with the following continuing competence requirements:

(a) hold a valid certification from the American College of Nurse Midwives Certification Council, Inc; and

(b) actively participate in a quality review program defined in Section R156-44a-304.

R156-44a-304. Quality Review Program.

In accordance with Subsection 58-44a-303(2)(c), quality review programs must meet

the following criteria for division approval.

- (1) The program shall consist of a program provider (provider), program staff, and CNMs, and shall be under the direction of the quality review provider.
- (2) The provider shall clearly demonstrate that its personnel have the knowledge and expertise in the practice of nurse midwifery and quality review to permit the provider to competently conduct a quality review program.
- (3) The review process shall be conducted on a regular, systematic basis.
- (4) A quality review program shall provide in its agreement between the provider and the licensee that:
 - (a) Upon a finding of gross incompetence, gross negligence, or a pattern of incompetence or negligence, the provider shall submit its findings to the division for appropriate action.
 - (b) If the licensee fails to substantially comply with a corrective action plan determined appropriate by the provider after a negative review by the provider, said failure shall be reported to the division for appropriate action.
 - (c) The provider shall make available to the division the results of a quality review upon the proper issuance of a subpoena by the division.

R156-44a-305. Inactive Licensure.

- (1) A licensee may apply for inactive licensure status in accordance with Sections 58-1-305 and R156-1-305.
- (2) To reactivate a license which has been inactive for five years or less, the licensee must document current compliance with the continuing competency requirements as established in Subsection R156-44a-303(3).
- (3) To reactivate a license which has been inactive for more than five years, the licensee must document one of the following:
 - (a) active licensure in another state or jurisdiction;
 - (b) completion of a refresher program approved by the American College of Nurse Midwives; or
 - (c) passing score on the required examinations as defined in Section R156-44a-302 within six months prior to making application to reactivate a license.

R156-44a-402. Administrative Penalties.

In accordance with Subsections 58-44a-102(1) and 58-44a-402(1), unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

- (1) Engaging in practice as a CNM or RN when not licensed or exempt from licensure:
initial offense: \$2,000 - \$5,000
subsequent offense(s): \$5,000 - \$10,000
- (2) Representing oneself as a CNM or RN when not licensed: initial offense:
\$100 - \$500
subsequent offense(s): \$200 - \$1,000
- (3) Using any title that would indicate that one is licensed under this chapter:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000
- (4) Practicing or attempting to practice nursing without a license or with a restricted license:
initial offense: \$2,000 - \$5,000
subsequent offense(s): \$5,000 - \$10,000
- (5) Impersonating a licensee or practicing under a false name:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- (6) Knowingly employing an unlicensed person:
initial offense: \$500 - \$1,000
subsequent offense(s): \$1,000 - \$5,000
- (7) Knowingly permitting the use of a license by another person:
initial offense: \$500 - \$1,000
subsequent offense(s): \$1,000 - \$5,000

(8) Obtaining a passing score, applying for or obtaining a license, or otherwise dealing with the division or board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(9) Violating or aiding or abetting any other person to violate any statute, rule, or order regulating nurse midwifery:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(10) Violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(11) Engaging in conduct that results in convictions or, or a plea of nolo contendere to a crime of moral turpitude or other crime:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(12) Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(13) Engaging in conduct, including the use of intoxicants, drugs to the extent that the conduct does or may impair the ability to safely engage in practice as a CNM:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(14) Practicing or attempting to practice as a CNM when physically or mentally unfit to do so:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(15) Practicing or attempting to practice as a CNM through gross incompetence, gross negligence, or a pattern of incompetency or negligence:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(16) Practicing or attempting to practice as a CNM by any form of action or communication which is false, misleading, deceptive, or fraudulent:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(17) Practicing or attempting to practice as a CNM beyond the individual's scope of competency, abilities, or education:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(18) Practicing or attempting to practice as a CNM beyond the scope of licensure:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(19) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(20) Disregarding for a patient's dignity or right to privacy as to his person, condition, possessions, or medical record:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(21) Engaging in an act, practice, or omission which does or could jeopardize the health, safety, or welfare of a patient or the public:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(22) Failing to confine one's practice to those acts permitted by law:

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(23) Failure to file or impeding the filing of required reports:

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(24) Breach of confidentiality:

initial offense: \$200 - \$1,000

subsequent offense(s): \$500 - \$2,000

(25) Failure to pay a penalty:

Double the original penalty amount up to \$10,000

(26) Prescribing a Schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan:

initial offense: \$500 - \$1,000

subsequent offense(s): \$500 - \$2,000

(27) Any other conduct which constitutes unprofessional or unlawful conduct:

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

R156-44a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failure to abide by the "Code of Ethics for Certified Nurse-Midwives", May 1990, published by the American College of Nurse Midwives which is hereby adopted and incorporated by reference.

R156-44a-601. Delegation of Nursing Tasks.

In accordance with Subsection 58-44a-102(11), the delegation of nursing tasks is further defined, clarified, or established as follows:

(1) The nurse delegating tasks retains the accountability for the appropriate delegation of tasks and for the nursing care of the patient/client. The licensed nurse shall not delegate any task requiring the specialized knowledge, judgment and skill of a licensed nurse to an unlicensed assistive personnel. It is the licensed nurse who shall use professional judgment to decide whether or not a task is one that must be performed by a nurse or may be delegated to an unlicensed assistive personnel. This precludes a list of nursing tasks that can be routinely and uniformly delegated for all patients/clients in all situations. The decision to delegate must be based on careful analysis of the patient's/client's needs and circumstances.

(2) The licensed nurse who is delegating a nursing task shall:

(a) verify and evaluate the orders;

(b) perform a nursing assessment;

(c) determine whether the task can be safely performed by an unlicensed assistive personnel or whether it requires a licensed health care provider;

(d) verify that the delegatee has the competence to perform the delegated task prior to performing it;

(e) provide instruction and direction necessary to safely perform the specific task; and

(f) provide ongoing supervision and evaluation of the delegatee who is performing the task.

(3) The delegator shall evaluate the situation to determine the degree of supervision required to ensure safe care.

(a) The following factors shall be evaluated to determine the level of supervision needed:

(i) the stability of the condition of the patient/client;

(ii) the training and capability of the delegatee;

(iii) the nature of the task being delegated; and

(iv) the proximity and availability of the delegator to the delegatee when the task will be performed.

(b) The delegating nurse or another qualified nurse shall be readily available either in person or by telecommunication. The delegator responsible for the care of the patient/client shall make supervisory visits at appropriate intervals to:

- (i) evaluate the patient's/client's health status;
- (ii) evaluate the performance of the delegated task;
- (iii) determine whether goals are being met; and
- (iv) determine the appropriateness of continuing delegation of the task.

(4) Nursing tasks, to be delegated, shall meet the following criteria as applied to each specific patient/client situation:

- (a) be considered routine care for the specific patient/client;
- (b) pose little potential hazard for the patient/client;
- (c) be performed with a predictable outcome for the patient/client;
- (d) be administered according to a previously developed plan of care; and
- (e) not inherently involve nursing judgment which cannot be separated from the procedure.

(5) If the nurse, upon review of the patient's/client's condition, complexity of the task, ability of the unlicensed assistive personnel and other criteria as deemed appropriate by the nurse, determines that the unlicensed assistive personnel cannot safely provide care, the nurse shall not delegate the task.

KEY: licensing, midwifery, certified nurse midwife*

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**NURSE MIDWIFE
PRACTICE ACT RULES**

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